



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2013 REGULAR SESSION

HOUSE BILL NO. 100

AS ENACTED

MONDAY, MARCH 11, 2013

RECEIVED AND FILED
DATE March 21, 2013
3:28pm
ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

1 AN ACT relating to auctions.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔Section 1. KRS 330.220 is amended to read as follows:

- 4 (1) If real or personal property is offered in lots or parcels in a sale by auction, each lot
5 or parcel shall be the subject of a separate sale. This subsection shall not preclude
6 real or personal property from being offered for bidding individually or in some
7 form or combination.
- 8 (2) Unless otherwise provided in the conditions of sale for auctions regarding horses or
9 any interests therein, a sale by auction is complete when the auctioneer so
10 announces by the fall of the hammer, announcing the item sold, and the successful
11 bidder's identification or in other customary manner. If it becomes immediately
12 apparent at the close of the bidding that the auctioneer and a bid assistant or
13 ringman have acknowledged the same bid from different bidders, the auctioneer
14 may continue the bidding between the disputed bidders. When a bid is made while
15 the auctioneer is in the process of completing the sale by auction, the auctioneer
16 may continue the bidding or declare the real or personal property sold under the bid
17 on which the hammer was falling.
- 18 (3) No auction shall be advertised as "absolute" nor shall any advertising contain the
19 words "absolute auction" or the word "absolute" or words with similar meaning nor
20 shall any licensee offer or sell any real or personal property at absolute auction
21 unless:
- 22 (a) There are no liens or encumbrances on the real or personal property, except
23 property tax obligations, easements, or restrictions of record, in favor of any
24 person, firm, or corporation other than the seller, or unless each and every
25 holder of each and every lien and encumbrance, by execution of the auction
26 listing contract, or otherwise furnishing to the auctioneer written evidence of a
27 binding commitment therefor, shall have agreed to the unqualified acceptance

1 of the highest bid for the property, without regard to the amount of the highest
 2 bid or the identity of the high bidder; or, alternatively, that a financially
 3 responsible person, firm, or corporation, by execution of the auction listing
 4 contract or by otherwise furnishing to the auctioneer written evidence of a
 5 binding commitment therefor, shall have absolutely guaranteed the forthwith
 6 and complete discharge and satisfaction of any and all liens and encumbrances
 7 immediately after the sale or at the closing, without regard to the amount of
 8 the highest bid received, or the identity of the high bidder; and

9 (b) There is the bona fide intention at the time of the advertising and at the time
 10 of the auction to transfer ownership of the real or personal property, regardless
 11 of the amount of the highest and last bid, to the high bidder, that intent
 12 existing without reliance on any agreement that any particular bid or bid level
 13 must be made or be reached, below which level the real or personal property
 14 would not be transferred to the high bidder; and

15 (c) The auction listing contract contains a binding requirement that the auction be
 16 conducted without reserve, and includes an acknowledgment that the seller, or
 17 anyone acting upon behalf of the seller, shall not bid at the absolute auction,
 18 or otherwise participate in the bidding process.

19 (4) Compliance with subsection (3) of this section shall not prohibit:

20 (a) A secured party or other lienholder who is not the seller from bidding at an
 21 absolute auction, providing that such bidding does not constitute, nor is it
 22 tantamount to the direct or indirect establishment or agreement to the
 23 establishment of a reserve price on the real or personal property by the seller
 24 or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of,
 25 the seller or the auctioneer; or

26 (b) Any individual party to the dissolution of any marriage, partnership, trust,
 27 limited liability company, or corporation from bidding as an individual entity

1 apart from the selling entity, on real or personal property being sold at auction
2 pursuant to that dissolution; or

3 (c) Any individual party or heir of a deceased person's bona fide estate from
4 bidding as an individual entity, apart from the selling entity, on real or
5 personal property being offered at auction pursuant to that estate settlement; or

6 (d) The inclusion of nonmisleading advertising of certain real or personal
7 property to be sold at "absolute auction" and the nonmisleading advertising of
8 certain real or personal property to be offered at auction with reserve, within
9 the same advertisement, or for sale at the same date and place, providing that
10 advertisement shall make clearly apparent through equal or appropriate
11 emphasis, which real or personal property is being offered by each method.

12 (5) Any auction sale is, without requirement of announcement at any time, presumed to
13 be with reserve unless the real or personal property is in explicit terms offered at
14 absolute auction. An auction without reserve means an absolute auction. An auction
15 with reserve means the real or personal property may be offered subject to the
16 seller's confirmation or subject to a certain reserve price. In an auction with reserve,
17 the auctioneer may withdraw the real or personal property at any time until he or she
18 announces completion of the sale. In an absolute auction, after the auctioneer calls
19 for bids on an article, lot, or parcel, that article, lot, or parcel shall not be withdrawn
20 unless no bid is made within a reasonable time. At both reserve auctions and
21 without reserve auctions, the auctioneer may establish reasonable bid increments
22 once an opening bid has been offered.

23 (6) (a) The provisions of this chapter shall not prohibit any licensee from bidding on
24 his or her own behalf at any auction sale, whether absolute or with reserve, if
25 his or her option to do so has been fully disclosed, including disclosure to the
26 seller.

27 (b) Except as provided in subsection (4) of this section, the seller may not bid at

1 an absolute auction, nor may anyone bid upon his or her behalf. No licensee
 2 shall knowingly receive a bid by or on behalf of the seller at an absolute
 3 auction.

4 (c) Bids may be made by the seller, or upon the seller's behalf, at any auction with
 5 reserve, provided that full disclosure has clearly been made that liberty for
 6 bidding is retained. No licensee shall knowingly receive a bid in the absence
 7 of full disclosure. If the auctioneer knowingly receives a bid on the seller's
 8 behalf or the seller makes or procures a bid and notice has not been clearly
 9 given that liberty for bidding is reserved, the buyer may avoid the sale or take
 10 the real or personal property at the price of the last good faith bid prior to the
 11 completion of the sale.

12 (d) There shall be no requirement that the reserve be announced when it is
 13 attained.

14 (e) Nothing in this subsection shall be construed to alter or diminish the
 15 provisions of KRS 330.210.

16 (7) (a) At any absolute auction, any advertisement or representation of a minimum or
 17 suggested starting bid is prohibited.

18 (b) At any reserve auction, any advertisement or representation of a minimum or
 19 suggested starting bid is prohibited unless:

20 1. The minimum or suggested starting bid advertised or represented is
 21 sufficient to satisfy the auction listing contract stated reserve or
 22 confirmation amount; and

23 2. The auction listing contract contains a binding acknowledgment by the
 24 seller that permission has been granted for disclosure.

25 ➔Section 2. KRS 45A.365 is amended to read as follows:

26 (1) All contracts or purchases shall be awarded by competitive sealed bidding, which
 27 may include the use of a reverse auction, except as otherwise provided by KRS

1 45A.370 to 45A.385 and for the purchase of wholesale electric power by municipal
2 utilities as provided in KRS 96.901(1).

3 (2) The invitation for bids shall state that the award shall be made on the basis of the
4 lowest bid price or the lowest evaluated bid price. If the latter is used, the objective
5 measurable criteria to be utilized shall be set forth in the invitation for bids. The
6 invitation for bids shall include the reciprocal preference for resident bidders
7 described in KRS 45A.494.

8 (3) Adequate public notice of the invitation for bids and any reverse auction shall be
9 given prior to the date set forth for the opening of bids. The notice may include
10 posting on the Internet or publication in a newspaper of general circulation in the
11 local jurisdiction at least~~[not less than]~~ seven (7) days before the date set for the
12 opening of the bids and any reverse auction. Nothing in this section shall prohibit
13 additional notice, posting, or publication, nor shall additional notification,
14 posting, or publication extend the required notice period. The public notice shall
15 include the time and place the bids will be opened and the time and place where the
16 specifications may be obtained.

17 (4) The bids shall be opened publicly or entered through a reverse auction at the time
18 and place designated in the invitation for bids. Each written or reverse auction bid,
19 together with the name of the bidder, shall be recorded and be open to public
20 inspection. Electronic bid opening and posting of the required information for
21 public viewing shall satisfy the requirements of this subsection.

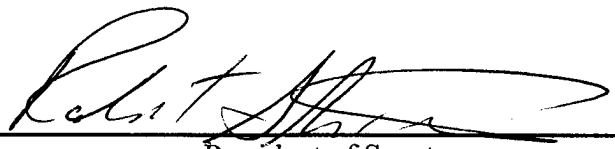
22 (5) A contract shall be awarded with reasonable promptness by written notice to the
23 responsive and responsible bidder whose bid is either the lowest bid price or the
24 lowest evaluated bid price after the application of any reciprocal preference for
25 resident bidders required by KRS 45A.494.

26 (6) The local public agency may allow the withdrawal of a bid where there is a patent
27 error on the face of the bid document, or where the bidder presents sufficient

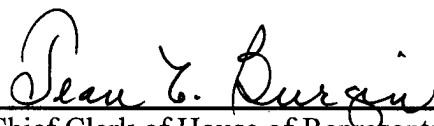
1 evidence, substantiated by bid worksheets, that the bid was based upon an error in
2 the formulation of the bid price.



Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 3-21-13